

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/09/2004

C O R A M

THE HONOURABLE Mr.JUSTICE A.K.RAJAN

Writ Petition No.10451 of 2004
and Writ Petition No. 10463 of 2004

W.P.No.10451 of 2004:

Best & Crompton Engg. Limited
39, Industrial Estate (North)
Ambattur
Chennai 58.
rep by its Authorized Signatory/
General Manager □ HR-Admn.
V.Ramachandran. ... Petitioner

-Vs-

1. The Presiding Officer
Ist Additional Labour Court
High Court
Chennai 104.

2. Ms. Latha Mukundan ... Respondents.

Writ petitions filed under Article 226 of the Constitution of
India praying for issuance of a Writ of Certiorari as stated therein.

!For Petitioner ... Mr. H.Karthik Seshadri

^For R.2 ... Mr. K. Ramkumar

:O R D E R

The prayer in the writ petitions is to issue a Writ of
Certiorari calling for the records connected with the Order in I.A.Nos.78 to
90 of 2004 in I.D.Nos.629 to 634, 733 to 739 of 2002 respectively, dated
5.4.2004, made by the first respondent/Labour Court and quash the same.

2. The writ petitioner challenged the Order of the Labour
Court. In the Labour Court, both parties were permitted to adduce evidence.
Oral evidence was recorded on the side of the second respondents herein
(petitioners before the Labour Court) and thereafter, the petitioner herein
did not adduce any oral evidence, and did want to submit its arguments. At
that stage, the second respondents herein filed a petition before the Labour

Court to call the person who signed the pleadings on behalf of the employer (petitioner herein) for "cross-examination". The Labour Court has allowed the applications. Challenging that order the writ petitions are filed.

3. According to the petitioner, Rule 34(7) of the Tamil Nadu Industrial Disputes Rules, 1958 provide for the examination of the witnesses. Rule 39 of the Tamil Nadu Industrial Disputes Rules specifies the powers of the Labour Court in that regard. According to Sec.11(3) of the Tamil Nadu Industrial Disputes Act, when a person is examined in chief, he can be cross-examined. On the other hand, if any party wants to examine a person as a witness, they can be called as "witnesses" to be examined on the side of that party, which wants him to examine. Under those circumstances, that witness can be "examined in chief". But, the prayer by the second respondents was only to "cross-examine" the witness and not to "examine" as a witness. Under Order XIX Rule 2 CPC, evidence can be adduced either by affidavit or by pleadings. But, only when witnesses are examined, the other side can cross-examine the witnesses. If the witnesses have not been examined at all, the other party cannot call for that witness and "cross examine". In support of the argument the learned counsel for the petitioner relied on the judgment in *mahunt shatrugan das V.. bawa sham das* [AIR 1938 PC 59]. Based upon this decision, he submitted that the Order of the Labour Court permitting the second respondents/ employee to call for the person who signed the pleadings to the witness box and to cross-examine, is not legally sustainable. The judgment referred to by the learned counsel for the petitioner relates only to proceedings before the civil court. Hence, that decision is not applicable to the proceedings before the Labour Court.

4. Mr. V.Prakash, learned Senior Counsel appearing for the second respondents, submitted that the Order impugned is only an interim order, namely, permitting to cross-examine the witness. The interim order by the Labour Court cannot be challenged in the writ proceedings. Only after award is passed, the entire award can be challenged. Therefore, the present writ petitions are premature. Further, the learned Senior Counsel contended that the provisions of the Code of Civil Procedure are not attracted to a proceedings before the Labour Court. Sec.11(3) of the Industrial Disputes Act provides that provisions of CPC are applicable to summon the witness and for that purpose it can exercise all powers of the Civil Court. Rule 34(7) Tamil Nadu Industrial Disputes Rules, 1958 refers only to Order XVIII Rule 5 CPC and not Order XIX Rule 2. Hence, the writ petitions are not maintainable.

7. In support of his contention, the learned Senior Counsel referred to the judgment in *D.P. MAHESWARI v.. DELHI ADMINISTRATION* [198 3 (2) LLJ 425] and another decision in *VERMA v.. MAHESH CHANDRA*, same volume, page 429. In the latter decision, in para 2, it is observed as follows:
" There appear to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in al solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an

instrumentality of the State, instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation, etc., should attempt to evade decision on merits by raising such objections and, never thereby satisfied, carry the matter oftentimes to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from court to court merely to vindicate, no justice, but some rigid technical stand taken up by them. We hope that public sector corporations will henceforth refrain from raising needless objections, fighting needless litigation and adopting needless postures." The learned Senior Counsel also referred to the judgment of the Supreme Court in MADHAVAN NAIR v.. REGISTRAR, HIGH COURT, KERALA [1968 (2) LLJ 259], where the Supreme Court has held that the Evidence Act is not applicable to the proceedings before the Labour Court as the Labour Court is not a civil Court.

9. The arguments of the learned Senior Counsel for the second respondents is acceptable. The provisions of the Code of Civil Procedure is not applicable to a proceedings before the Labour Court. Application of the Code of Civil Procedure is only to a very limited extent. Therefore, the provisions of the Code of Civil Procedure in regard to examination of witness in a civil proceedings are not applicable. Therefore, Order XIX Rule 2 of the Code of Civil Procedure is not applicable to a proceedings before the Labour Court. Hence, the contention of the learned counsel for the petitioner is not acceptable. The Labour Court is empowered to call for any witness only for crossexamination. It is not necessary that he must be only examined in chief. Further, the Order of the Labour Court can be challenged not at this stage, but only after passing of the final Award. Therefore, the writ petitions are

dismissed as premature. No costs. Consequently, WPMPs 12222, 12224, 12226, 12228, 12230, 12232, 12234, 12236, 12238 , 12240, 12242, 12244, 12246 of 2004 are dismissed.

Index: Yes
Internet: Yes

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